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Volume 19 | Number 16 Article 2

8-15-2008

Cases, Regulations, and Statutes

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Recommended Citation

Achenbach, Robert P. Jr (2008) "Cases, Regulations, and Statutes," *Agricultural Law Digest*: Vol. 19 : No. 16 , Article 2.
Available at: http://lib.dr.iastate.edu/aglawdigest/vol19/iss16/2

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[19] I.R.C. § 36(g).

[20] I.R.C. § 63(c).

[21] I.R.C. §§ 164(a)(1), 63(c)(1)(C), (c)(7). See also I.R.C. § 216 (for tenant-stockholders in a cooperative housing corporation).

[22] I.R.C. § 63(c)(7)(B).

[23] I.R.C. § 63(c)(7)(A).

[24] I.R.C. § 63(c)(7).

[25] Housing Assistance Act of 2008, Pub. L. 110-289, § 3012(a).

[26] I.R.C. § 121. See generally 6 Harl, *Agricultural Law* § 48.02[5] (2008); Harl, *Agricultural Law Manual* § 6.03[2](2008); 1 Harl, *Farm Income Tax Manual* § 2.12[3] (2008). See also Harl, "Section 121 Exclusion and Like-Kind Exchange on Same Property," 16 *Agric. L. Dig*. 17 (2005); Harl, "Excluding Gain on Sale of Residence," 14 *Agric. L. Dig*. 105 (2003); Harl, "More Detail on the Principal Residence Exclusion," 14 *Agric. L. Dig*. 9 (2003).

[27] I.R.C. § 121(a).

[28] *Id.*

[29] I.R.C. § 121(c).

[30] I.R.C. § 121(b)(4)(A).

[31] I.R.C. § 121(b)(4)(B).

[32] I.R.C. § 121(b)(4)(B) (i).

[33] I.R.C. § 121(a).

[34] I.R.C. § 121(b)(4)(C)(ii)(I).

[35] I.R.C. § 121(b)(4)(C)(ii)(II).

[36] I.R.C. § 121(b)(4)(C)(ii)(III).

[37] I.R.C. § 121(d)(6).

[38] I.R.C. § 121(b)(4)(D)(i).

[39] I.R.C. § 121(b)(4)(D)(ii).

[40] Housing Assistance Tax Act of 2008, Pub.L. 110-289, § 3092(a).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

CHAPTER 12

MODIFICATION OF PLAN. The debtor's estate included improved real property, 11.2 acres, which was valued on the bankruptcy schedules at $40,000. The Chapter 12 plan provided for payment of a loan secured by the property and removal of the lien. Two years after the plan was confirmed, the property was subject to condemnation by the State of Texas for highway expansion and the state offered to pay $175,000 for six acres of the property. The creditors sought modification of the plan to provide that any proceeds of the condemnation would be applied to payment of unsecured creditors. The creditors argued that the condemnation award was an unforeseen circumstance and would result in a windfall to the debtor if not applied to the unsecured claims. The Bankruptcy Court granted the modification of the plan because the condemnation proceeds were disposable income to the debtor and were not necessary for the debtor to continue farming. The appellate court affirmed. **Conner v. First National Bank-Haskell, 2008 U.S. Dist. LEXIS 53555 (N.D. Tex. 2008)**.

FEDERAL TAX

SALE OF CHAPTER 12 ESTATE PROPERTY. The debtor filed for Chapter 12 and, with permission of the Bankruptcy Court, sold the debtor's farm, resulting in $29,000 of capital gain. The debtor's plan included the capital gains as an unsecured claim to be paid to the extent of other unsecured claims. The IRS objected to the plan, arguing that the capital gains were the post-petition personal responsibility of the debtor because no taxable entity was created in the bankruptcy estate. The debtor cited *In re Knudsen, 389 B.R. 643 (N.D. Iowa 2008), aff'g in part, 356 B.R. 480 (Bankr. N.D. Iowa 2006)*, which held that, under Section 1222(a)(2)(A), taxes generated by the sale of Chapter 12 estate property could be treated as unsecured claims of the estate. The Bankruptcy Court in this case had rejected the holding of *In re Knudsen*, and held that the statute was clear that no separate taxable entity was created in Chapter 12 proceedings, therefore, post-petition sales of estate property were taxable to the debtor personally. The Bankruptcy Court also had held that the taxes were not entitled to the administrative expenses exception in Section 1222(a)(2)(A) because the taxes were not entitled to priority under Section 507. On appeal the District Court reversed, holding that, in accordance with *In re Knudsen*, *In re Dawes, 382 B.R. 509 (Bankr. D. Kan. 2008)*, and *In re Schilke, 379 B.R. 899 (Bankr. D. Neb. 2007),* the legislative history and purpose of Section 1222(a)(2)(A) required that income taxes resulting from postpetition sales of a Chapter 12 debtor's property were administrative expenses entitled to application of Section 1222(a)(2)(A). See Harl, "District Court in Knudsen Holds for Debtors in Chapter 12 Case," 19 *Agric. L. Dig*. 101 (2008). ***In re* Hall, CV-07-679-TUC-DCB (D. Ariz. Aug. 6, 2008), *rev'g*, 376 B.R. 741 (Bankr. D. Ariz. 2007)**.

The IRS has filed an appeal of *In re Knudsen, 389 B.R. 643 (N.D. Iowa 2008), aff'g in part, 356 B.R. 480 (Bankr. N.D. Iowa 2006)* (capital gains taxes resulting from postpetition sales of a Chapter 12 debtor's property were administrative expenses entitled to application of Section 1222(a)(2)(A)).

FEDERAL AGRICULTURAL PROGRAMS

ANIMAL WELFARE. The APHIS has extended the comment period on proposed regulations which amend the Animal Welfare Act regulations by adding minimum age requirements for the transport in commerce of animals. The regulations currently contain such requirements for dogs and cats, but no corresponding ones for other regulated animals, despite the risks associated with the early transport of these species. The proposed regulations also allow, provided certain conditions are met, for animals to be transported without their mothers for medical treatment and for scientific research before reaching the minimum age and weaning requirement. **73 Fed. Reg. 44671 (July 31, 2008)**.

COUNTRY OF ORIGIN LABELING. The AMS has issued interim final regulations governing implementation of the country of origin labeling requirements under the Farm Security and Rural Investment Act of 2002, the 2002 Supplemental Appropriations Act, and the Food, Conservation, and Energy Act of 2008 which amended the Agricultural Marketing Act of 1946 (Act) and require retailers to notify their customers of the country of origin of covered commodities. Covered commodities under the 2002 legislation include muscle cuts of beef (including veal), lamb, chicken, goat, and pork; ground beef, ground lamb, ground chicken, ground goat, and ground pork; wild and farm-raised fish and shellfish; perishable agricultural commodities; macadamia nuts; pecans; ginseng; and peanuts. The implementation of mandatory country of origin labeling (COOL) for all covered commodities, except wild and farm-raised fish and shellfish, was delayed until September 30, 2008. The 2008 Farm Bill contains a number of provisions that amended the COOL provisions in the Act. These changes include the addition of chicken, goat, macadamia nuts, pecans, and ginseng as covered commodities, the addition of provisions for labeling products of multiple origin, as well as a number of other changes that are discussed more fully in the supplementary information portion of this rule. However, the implementation date of September 30, 2008, was not changed by the 2008 Farm Bill. Therefore, in order to meet the September 30, 2008, implementation date and to provide the newly affected industries the opportunity to provide comments prior to issuing a final rule, the AMS is issuing this interim final rule. This interim final rule contains definitions, the requirements for consumer notification and product marking, and the recordkeeping responsibilities of both retailers and suppliers for covered commodities. **73 Fed. Reg. 45105 (Aug. 1, 2008)**.

CROP INSURANCE. The FCIC has adopted as final regulations governing the coverage enhancement option (CEO) provisions. The regulations restrict the effect of the current pilot coverage enhancement option to 2008 and prior crop years and replace the pilot provisions with permanent provisions. **73 Fed. Reg. 43607 (July 28, 2008)**.

FEDERAL ESTATE AND GIFT TAXATION

EXECUTOR LIABILITY FOR ESTATE TAX. The decedent was a nonresident alien with property in the United States and whose estate had a federal estate tax liability. The property was distributed to the decedent's surviving spouse and no executor was appointed in the U.S. Under I.R.C. § 2002, an estate's executor is liable for any unpaid estate tax. Under the federal insolvency statute, 31 U.S.C. § 3713, the federal estate tax claims are to be paid first where there are insufficient funds in the estate to pay all creditors of the estate. Under 31 U.S.C. § 3713(b), an estate representative is personally liable for federal claims not paid first in the case of an insolvent estate. Under I.R.C. § 2203, an executor includes persons who received actual or constructive possession of estate property. In a Chief Counsel Advice letter, the IRS ruled that it could not rule on the issue of whether the I.R.C. § 2203 definition of executor could be applied for enforcement of 31 U.S.C. § 3713(b) personal liability of persons receiving estate property where the estate has insufficient funds to pay the federal estate tax because of that person's receipt of estate property. **CCA Ltr. Rul. 200830001, Feb. 26, 2008**.

GENERATION SKIPPING TRANFSERS. The IRS has adopted as final regulations providing guidance regarding the generation-skipping transfer (GST) tax consequences of the severance of a trust in a manner that is effective under state law, but that does not meet the requirements of a qualified severance under I.R.C. § 2642(a)(3). The final regulations provide guidance regarding the GST tax consequences of a qualified severance of a trust with an inclusion ratio between zero and one into more than two resulting trusts. The final regulations also provide special funding rules applicable to the non-pro rata division of certain assets between or among resulting trusts. **73 Fed. Reg. 44649 (July 31, 2008)**.

TRUSTS. The IRS has issued a revenue procedure which contains annotated sample declarations of trust and alternate provisions that meet the requirements for an inter vivos charitable lead unitrust (CLUT) providing for unitrust payments payable to one or more charitable beneficiaries for the unitrust period followed by the distribution of trust assets to one or more noncharitable remaindermen. A CLUT is an irrevocable split-interest trust that provides for a specified amount to be paid to one or more charitable beneficiaries during the term of the trust. The principal remaining in the trust at the end of the term is paid over to, or held in a continuing trust for, a noncharitable beneficiary or beneficiaries identified in the trust. If the terms of a CLUT created during the donor's life satisfy the applicable statutory and regulatory requirements, a gift of the charitable lead unitrust interest will qualify for the gift tax charitable deduction under I.R.C. § 2522(c)(2)(B) and/or the estate tax charitable deduction under I.R.C. § 2055(e)(2)(B). In certain cases, the gift of the unitrust interest may also qualify for the income tax charitable deduction under I.R.C. § 170(a). The value of the remainder interest is a taxable gift by the donor at the time of the donor's contribution to the trust. **Rev. Proc. 2008-45, 2008-2 C.B. 224**.

The IRS has issued a revenue procedure which contains an annotated sample declaration of trust and alternate provisions that meet the requirements for a testamentary charitable lead unitrust (CLUT) providing for unitrust payments payable to one or more charitable beneficiaries for the unitrust period followed by the distribution of trust assets to one or more noncharitable remaindermen. If the terms of a CLUT created on the decedent's death satisfy the applicable statutory and regulatory requirements, the value of the charitable lead unitrust interest will be deductible by the decedent's estate under I.R.C. § 2055(e)(2)(B) and payments of the unitrust amount to the charitable lead beneficiary will be deductible from the gross income of the trust to the extent provided by I.R.C. § 642(c)(1). Under the provisions of part I of subchapter J, a CLUT is allowed a deduction under I.R.C. § 642(c)(1) in determining its taxable income for any amount of gross income paid for purposes specified in I.R.C. § 170(c).**Rev. Proc. 2008-46, 2008-2 C.B. 238**.

FEDERAL INCOME TAXATION

ALIMONY. The taxpayer was divorced and during the divorce proceeding, was ordered to pay $12,000 in temporary support during the proceeding. The taxpayer did not make all the payments and the divorce decree included an order for the taxpayer to pay the unpaid amount. The taxpayer deducted the amount paid as alimony. The court held that, because the payments would have ceased upon the death of the former spouse, the payments were deductible as alimony. **Le v. Comm'r, T.C. Memo. 2008-183**.

ALTERNATIVE MINIMUM TAX. The taxpayer exercised employer-granted incentive stock options (ISOs) in 2000 and included in alternative minimum tax income the spread between the exercise price of the stock options and the date-of-exercise fair market value of the stock. Although some of the stock purchased was non-vested in 2000, the taxpayer elected, under I.R.C. § 83(b), to report AMT on all the shares. In 2001 the taxpayer's employment terminated before the non-vested stock became vested, resulting in the employer's repurchase of that stock at the option price. That purchase resulted in an AMT capital loss equal to the amount originally included in AMTI. In 2002, the taxpayer sold the vested stock for an amount which resulted in an additional AMT capital loss. The taxpayer filed amended returns for 2000 and 2001, claiming that the I.R.C. § 83(b) election was invalid and reducing the AMT. The taxpayer argued that the taxpayer was not entitled to the Section 83(b) election because the non-vested stock was not "property" because it was subject to substantial risk of forfeiture from employment termination or employer bankruptcy. The court disagreed and held that the nonvested stock was property eligible for the Section 83(b) election. The court also held that the taxpayer's AMT capital losses were subject to the limitations on capital loss deductions in I.R.C. §§ 172(d) and 1211(b); consequently, the losses were not deductible as alternative net operating losses under I.R.C. § 56(d)(2)(A)(i); therefore, the taxpayer could only claim them as direct adjustments to AMT income, subject to other limitations. **Kadillak v. Comm'r, 2008-2 U.S. Tax Cas. (CCH) ¶ 50,462 (9th Cir. 2008), *aff'g*, 127 T.C. 184 (2007)**.

The taxpayer received employee incentive stock options from an employer and had losses from the exercise of the options. Although the losses were limited under regulation income tax rules, the taxpayer argued that the losses were not limited under the AMT because no statute or regulation covers stock option losses for AMT purposes. The court held that the IRS had issued guidance in *Notice 2004-28, 2004-1 C.B. 783*, that AMT stock option exercise losses were subject to the same limitation as regular losses, under I.R.C. § 1211 (losses capped at $3,000 per year for individuals). The court upheld the IRS interpretation and held the taxpayer's stock option exercise losses were subject to the I.R.C. § 1211 limitation. The appellate court affirmed in an opinion designated as not for publication. **Norman v. United States, 2008-2 U.S. Tax Cas. (CCH) ¶ 50,467 (9th Cir. 2008), *aff'g*, 2006-2 U.S. Tax Cas. (CCH) ¶ 50,429 (N.D. Calif. 2006)**.

AUDITS. The IRS reminds business taxpayers, associations and other interested parties that the deadline to submit new topics to the Industry Issue Resolution (IIR) Program is August 31, 2008. The IIR Program is intended to resolve business tax issues common to a significant number of taxpayers through new and improved guidance, thereby reducing the number of case-by-case examinations. The IRS generally will select issues involving two or more of the following characteristics: uncertain interpretation of tax regulations; uncertainty that results in frequent and repetitive examinations of the same issue; uncertainty that results in undue taxpayer burden; an issue that is significant and affects a large number of taxpayers; and/or an issue that involves extensive factual development and understanding of industry practices. The criteria used in choosing a new IIR topic can be found in *Rev. Proc. 2003-36, 2003-1 CB 859*. Issues can be submitted at any time; however, to be considered for the 2008 fall review, submissions must be received by August 31, 2008 and can be e-mailed to IIR@irs.gov. **IR-2008-93**.

CAPITAL LOSSES. The taxpayer sold stock during the tax year but did not file a federal income tax return. The IRS used third party information to determine that all of the proceeds of the sale of the stock were included in taxable income and assessed taxes on the proceeds. The taxpayer filed an amended return and claimed only a portion of the proceeds as income, claiming that the stock had an income tax basis greater than zero. The IRS argued that, because the taxpayer failed to file a timely income tax return, the IRS could properly treat the stock as having a basis of zero. The court found that the taxpayer failed to substantiate any income tax basis in the stock and upheld the IRS assessment. **Cook v. Comm'r, T.C. Memo. 2008-182**.

CHARITABLE DEDUCTION. The IRS has issued proposed regulations providing guidance concerning substantiation and reporting requirements for cash and noncash charitable contributions under I.R.C. § 170. The regulations reflect the enactment of provisions of the American Jobs Creation Act of 2004 and the Pension Protection Act of 2006. The regulations require taxpayers to obtain a qualified appraisal for donated property if the taxpayer is claiming more than a $5,000 deduction, or attach to the tax return a qualified appraisal for contributions of property for which a deduction of more than $500,000 is claimed. **73 Fed. Reg. 45908 (Aug. 7, 2008)**.

DISASTER LOSSES. On July 15, 2008, the president determined that certain areas in Vermont are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of severe storms and flooding, which began on June 14, 2008. **FEMA-1778-DR.** On July 18, 2008, the president determined that certain areas in Nebraska are eligible for assistance from the government under the Act as a result of severe storms and flooding, which began on June 27, 2008. **FEMA-1779-DR**. Taxpayers who sustained losses attributable to these disasters may deduct the losses on their 2007 returns.

EDUCATIONAL EXPENSES. The taxpayer was an electrical engineer until laid off and started day-trading in stocks. The taxpayer attended a five-day course on day trading and claimed deductions for the cost of the course and travel expenses resulting from the course. The taxpayer admitted that the taxpayer was not in the business of day trading. The taxpayer argued that, because the course was not a convention, seminar or similar meeting, the deduction for the costs was not prohibited by I.R.C. § 274(h)(7). The court held that Section 274(h)(7) applied to prohibit the deductions because the course covered investment or financial planning. **Jones III v. Comm'r, 131 T.C. No. 3 (2008)**.

EXTRATERRITORIAL INCOME. The IRS Chief Counsel has ruled that former I.R.C. § 943(c) (repealed in 2004) does not apply to income that generates an exclusion determined under Section 101(d) of the American Jobs Creation Act of 2004 (Pub. L. No. 108-357). Therefore, I.R.C. § 943(c) does not limit the amount of income attributable to foreign trading gross receipts that may be treated as from foreign sources and, therefore, excludable from gross income. The 2004 Act provided that, for transactions entered into during 2005 and 2006, taxpayers may exclude from gross income 80 percent and 60 percent, respectively, of the amount of income that would have been excluded as an ETI exclusion but for the repeal of the ETI exclusion provisions. **IRS Advice Memo. AM 2008-008, July 28, 2008**.

GAMBLING LOSSES. The taxpayer had income from gambling winnings which would have allowed for deductions for gambling losses suffered in the same tax years. However, the taxpayer did not itemize deductions because the taxpayer's itemized deductions did not exceed the standard deduction. The court held that the taxpayer could not claim deductions for the gambling losses because the taxpayer did not itemize deductions in the tax years involved, even though the taxpayer had income from gambling winnings. **Cromley v. Comm'r, T.C. Memo. 2008-176**.

IRA. The taxpayer was the surviving spouse of a decedent whose estate included property in an IRA. The taxpayer was the beneficiary and trustee of the IRA and the taxpayer directed the company which held the IRA to change the name on the IRA to that of the taxpayer. However, the company distributed the funds in the IRA to a non-IRA account in the taxpayer's name. The taxpayer learned about the error more than 60 days after the distribution and requested a waiver of the 60-day turnover requirement to properly distribute the funds to an IRA for the taxpayer. The IRS granted the waiver. **Ltr. Rul. 200831025, May 5, 2008**.

The taxpayers, husband and wife, lived in a residence initially owned by the wife's parents. The parents first transferred the residence to the taxpayers and the parents as joint tenants and then transferred full title to the taxpayers. After the residence was transferred to the taxpayers, the taxpayer obtained a mortgage loan on the residence. The husband received an early distribution from a pension fund and used the money to pay off the remaining mortgage loan amount. The taxpayers included the distribution in taxable income but did not pay the 10 percent additional tax for early distributions. The taxpayers argued that they qualified for the first-time home buyer exception to the 10 percent tax. The court held that the taxpayers were not eligible for the first-time home buyer exception because, at the time of the distribution, the taxpayers had a prior interest in the residence during the time the taxpayers and parents were joint owners of the property. **Sharma v. Comm'r, T.C. Summary Op. 2008-98**.

INNOCENT SPOUSE. The taxpayer was the surviving spouse of a decedent who owed income taxes. The taxpayer sought innocent spouse relief from liability for the taxes. The court held that the taxpayer was entitled to innocent spouse relief under the safe harbor provisions of Rev. Proc. 2000-15, 2000-1 C.B. 447, because the taxpayer did not have any information that the decedent would not pay the taxes and the taxpayer's spouse was deceased. **Alioto v. Comm'r, T.C. Memo. 2008-185**.

The taxpayer divorce a former spouse in the tax year involved and the divorce decree required the parties to file a joint federal tax return for the tax year and to supply all the relevant information for filing the return. During the tax year, the former spouse was unemployed and received unemployment benefits. The spouse did not provide any information about the unemployment benefits and the joint tax return did not list the benefits in income. The taxpayer sought innocent spouse relief from liability for the additional taxes. The court held that the innocent spouse relief should be granted because the former spouse withheld the information and the taxpayer had no reasonable knowledge that the spouse had received unemployment benefits. **Seamons v. Comm'r, T.C. Summary Op. 2008-92**.

LOW INCOME HOUSING CREDITS. The IRS has issued a revenue ruling which provides the monthly bond factor amounts to be used by taxpayers who dispose of qualified low-income buildings or interests therein during the period January through September 2008. **Rev. Rul. 2008-36, 2008-2 C.B. 165**.

PENSION PLANS. The IRS has adopted as final regulations providing mortality tables to be used in determining present value or making any computation for purposes of applying certain pension funding requirements. **73 Fed. Reg. 44632 (July 31, 2008)**.

For plans beginning in August 2008 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the 30-year Treasury securities annual interest rate for this period is 4.73 percent, the corporate bond weighted average is 6.07 percent, and the 90 percent to 100 percent permissible range is 5.46 percent to 6.07 percent. **Notice 2008-69, I.R.B. 2008-34**.

RETURNS. The IRS has posted drafts of the following forms in the Topics for Tax Professionals section of the IRS website (http://www.irs.gov/taxpros/topic/index.html) under Draft Tax

Forms: Form 706-GS(D) (Rev. October 2008), Generation-Skipping Transfer Tax Return For Distributions; Form 706-GS(D-1) (Rev. October 2008), Notification of Distribution From a Generation-Skipping Trust; Form 709 (2008), United States Gift (and Generation-Skipping Transfer) Tax Return; Form 1040 (2008), U.S. Individual Income Tax Return; Form 1040 (Schedule SE) (2008), Self-Employment Tax; Form 1040-A (2008), U.S. Individual Income Tax Return; Form 1040-X (Rev. November 2008), Amended U.S. Individual Income Tax Return; Form 1099-PATR (2009), Taxable Distributions Received From Cooperatives; Form 1099-S (2009), Proceeds From Real Estate Transactions; and Form 1099-SA (2009), Distributions From an HSA, Archer MSA, or Medicare Advantage MSA; Form 1120-S (Schedule D) (2008), Capital Gains and Losses and Built-In Gains; Form 2106 (2008), Employee Business Expenses; Form 2106-EZ (2008), Unreimbursed Employee Business Expenses; Form 8834 (Rev. November 2008), Qualified Electric Vehicle Credit; Form 8865 (Schedule K-1) (2008), Partner's Share of Income, Deductions, Credits, etc.; Form 8879-PE (2008), IRS e-file Signature Authorization for Form 1065; Form 8879-S (2008), IRS e-file Signature Authorization for Form 1120S; Form 8903 (2008), Domestic Production Activities Deduction.

The IRS has announced that Individuals and organizations with 25 or more trucks, tractors or other heavy vehicles used on highways must now electronically file Form 2290, Heavy Highway Vehicle Use Tax Return. The American Jobs Creation Act of 2004 (Pub. L. No 108-357) provides that taxpayers with at least 25 vehicles must file their Forms 2290 electronically. To file electronically, taxpayers need to select an approved transmitter/software provider for Form 2290. More information is available about this on the IRS's web site (www.irs.gov/efile/article/0,,id=170570,00.html). Form 720, Quarterly Federal Excise Tax Return, and Form 8849, Claim for Refund of Excise Tax, may also be filed electronically. **IR-2008-94**.

S CORPORATIONS

DISCHARGE OF INDEBTEDNESS. Proposed regulations have been issued that provide guidance on the manner in which an S corporation reduces its tax attributes under I.R.C. § 108(b) for taxable years in which the S corporation has discharge of indebtedness income that is excluded from gross income under I.R.C. § 108(a). The regulations address situations in which the aggregate amount of the shareholder's disallowed I.R.C. § 1366(d) losses and deductions that are treated as a net operating loss tax attribute of the S corporation exceeds the amount of the S corporation's excluded discharge of indebtedness income. **73 Fed. Reg. 45656 (Aug. 6, 2008)**.

DISREGARD OF CORPORATE FORM. The taxpayers, parent and child, each had a sole proprietorship business. The taxpayers formed an S corporation but made no changes to the operation of their businesses, did not create a separate bank account for the corporation and did not have an employment agreement with the corporation. The taxpayers claimed a deduction from income for payments to the S corporation for services provided to their businesses and claimed the payments as pass-through income from the corporation. The court held that the transactions could be ignored as lacking in economic substance and upheld an IRS determination that the payments did not decrease the taxpayers' self-employment income from their individual businesses. **Jarrett v. Comm'r, T.C. Summary Op. 2008-94**.

SOCIAL SECURITY BENEFITS. The taxpayers received social security benefits during the tax year but failed to include the benefits in taxable income. After a deficiency notice was sent to the taxpayers, the taxpayers filed an amended return with the social security benefits included in taxable income and paid the additional tax. The IRS also assessed an accuracy-related penalty and the taxpayers challenged that penalty. The taxpayers had their income tax return prepared by a professional tax return preparer; however, the taxpayers admitted to not examining the return before signing it. The court also noted that the evidence did not support any finding that the taxpayers supplied the return preparer with all necessary information; therefore, the court held that the penalty was properly applied. **Wilson v. Comm'r, T.C. Summary Op. 2008-91**.

SOCIAL SECURITY TAXES. The taxpayer operated accredited medical residency programs for new doctors who have completed their medical education. The taxpayer withheld and paid FICA taxes on the amounts paid to the medical residents and filed for a refund of those payments, arguing that the medical residents qualified for the student exception under I.R.C. § 3121(b)(10). The IRS sought a summary judgment based on the argument that medical residents as a matter of law could never qualify for the student exception. The trial and appeals courts held that the determination of whether the stipends paid to medical residents were subject to FICA taxes was to be based on the nature of the relationship between the residents and the payor of the stipend. If the relationship was educational, the student exception applied to relieve the stipends from FICA tax. The trial court initially found that the medical residents were not students and granted the IRS motion for summary judgment. On appeal, the appellate court held that, as a matter of law, the hospital was not precluded from the student exception and substantial fact issues remained which prevent summary judgment. On remand the trial court held that the medical residents were students entitled to the exception because the residents were enrolled in classes and received regular evaluation. In addition, the medical center had traditional educational facilities such as lecture halls, libraries, classrooms, counseling services and teaching laboratories. **United States v. Mount Sinai Medical Center of Florida, Inc., 2008-2 U.S. Tax Cas. (CCH) 50,469 (S.D. Fla. 2008), *on rem. from*, 468 F. 3d 1248 (11th Cir. 2007), *rev'g and rem'g*, 2005-1 U.S. Tax. Cas. (CCH) ¶ 50,156 (M.D. Fla. 2005)**.

VEHICLE EXPENSES. The taxpayers were husband and wife. The husband was a sole proprietor as a manufacturer's representative and incurred expenses associated with the use of vehicles leased from the wife. The husband claimed vehicle deductions based on the mileage rate and substantiated the mileage with written mileage logs created from daily mileage logs. The husband and wife also claimed deductions for actual costs associated with the vehicles. The court allowed the mileage deduction on the basis of the smallest amount of miles claimed by the husband. The court disallowed the deductions for the actual costs because the husband claimed the standard mileage deduction. **Larson v. Comm'r, T.C. Memo. 2008-187**.

Agricultural Law Press
P.O. Box 835 Brownsville, OR 97327

FARM INCOME TAX, ESTATE AND BUSINESS PLANNING SEMINARS

by Neil E. Harl

Outrigger Keauhou Beach Resort, Big Island, Hawai'i. January 6-10, 2009

Spend a week in Hawai'i in January 2009 and attend a world-class seminar on Farm Income Tax, Estate and Business Planning by Dr. Neil E. Harl. The seminar is scheduled for January 6-10, 2009 at the spectacular ocean-front Outrigger Keauhou Beach Resort on Keauhou Bay, 12 miles south of the Kona International Airport on the Big Island, Hawai'i.

Seminar sessions run from 8:00 a.m. to 12:00 p.m. each day, Tuesday through Saturday, with a continental breakfast and break refreshments included in the registration fee. Each participant will receive a copy of Dr. Harl's 400+ page seminar manual *Farm Income Tax: Annotated Materials* and the 600+ page seminar manual, *Farm Estate and Business Planning: Annotated Materials,* both of which will be updated just prior to the seminar.

The Agricultural Law Press has made arrangements for substantial discounts on partial ocean view hotel rooms at the Outrigger Keauhou Beach Resort, the site of the seminar. The seminar registration fee is $645 for current subscribers to the *Agricultural Law Digest,* the *Agricultural Law Manual* or the *Principles of Agricultural Law*. The registration fee for nonsubscribers is $695. For more information call Robert Achenbach at 541-466-5544 or e-mail at robert@agrilawpress.com.

AALA ANNUAL AGRICULTURAL LAW SYMPOSIUM

The American Agricultural Law Association is holding its 29th Annual Agricultural Law Symposium on October 24 & 25, 2008 at the Marriott Hotel in downtown Minneapolis, MN.

Topics will include annual updates on bankruptcy, income and estate tax, federal farm programs, food safety and environmental law. Special panel presentations are being planned for topics of special interest to Minnesota and Midwest practitioners, as well as panel discussions on national agricultural law topics, including the 2008 Farm Bill.

More information can be found on the AALA web site http://www.aglaw-assn.org or by contacting Robert Achenbach, AALA Executive Director at RobertA@aglaw-assn.org or by phone at 541-466-5444.